THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. Nos.7650 of 2000 and 15401 of 2001

ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

These two writ petitions emanate from a common order dated 07-03-2000 passed in L.G.C. No.172 of 1996 by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act'), they can be disposed of together.

The 1st respondent, State, filed an application under Section 8 of the Act seeking eviction of the petitioner and another from the property in dispute on the premise that they were the land grabbers. The 1st respondent in the said L.G.C. was former President of Musafir Khana.

The case of the applicant, State, was that the land in dispute admeasuring 426 square yards covered by old T.S. No.17/1A1A, correlated to new NTS No.26 situate at Vijayawada (Urban) stood classified as "Hill Poramboke", popularly known as "Gandhi Hill" in the revenue records. The respondents after grabbing the land, raised a pucca building thereon unauthorizedly contrary to the public safety measures, as it is a hill slope.

The respondents 1 and 2 resisted that application by filing separate counters. The quaint essence of the case of the respondents seems to be that the classification of the land in question is "Hill Poramboke" is not correct and that the building in

question was constructed by the then Chairman of Vijayawada Municipality by name D.S. Ramachandra Rao, which has been under the management of Musafir Khana established on 17-02-1927. One Shaik Mastan was appointed as President of Musafir Khana. The Chairman of the Vijayawada Municipality was also the Chairman of the

Musafir Khana, in those days. The purpose of the institution is to help the poor and needy Muslim, who come to Vijayawada for treatment and other medical purposes for their sojourn and the income accrued thus by way of collection of nominal rents by them used to be spent for giving free medical aid and one 'madarasa' used to be run from out of those funds, free of cost for the benefit of Muslim ladies and subsequently the said property was notified in the A.P. Gazette dated 28-06-1962, and therefore, the property in dispute is Wakf property.

Their further plea as taken *inter alia* in the counters is that the institution has perfected its title by way of adverse possession and the suit is barred of limitation.

Basing on the above pleadings, the Special Court framed the issues as under:

> "1. Whether the applicant is the owner of the application schedule property?
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> 2. Whether the respondent is in no way connected with the application schedule property?
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> 3. Whether the application schedule property belongs to A.P. Wakf Board and whether the A.P. Wakf Board is a necessary party to this application?
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> 4. Whether the respondent is a land grabber

within the meaning of Sec.2(d) and (e) of the A.P. Act XII of 1982?

5. To what relief?"

At the time of enquiry, three witnesses were examined on the side of the applicant, State, and Exs.A-1 to A-6 were got marked. Three witnesses were examined on the side of the respondents besides getting Exs.B1- to B-6 marked.

Appreciating the evidence thus adduced, both oral and documentary, on either side, the learned Special Court was of the view on issue No.1 that the property being a "Hill Poramboke", the applicant, State, had title to the same. Consequently it held that it did not belong to A.P. Wakf Board, on issue No.3. Eventually, the Special Court held that the respondents 2 and 3 as land grabbers. The petitioners therefore seek a Writ of *Certiorari* assailing the said judgment of the Special Court.

It is sought to be contended before us that the State had no title of the property, at any rate, respondents 2 and 3 could not be declared as land grabbers. It is the further contention of the writ petitioners that even otherwise by virtue of long-standing possession from 1927 onwards, the respondents have perfected their title by means of adverse possession.

Apropos the 1st contention, the State seeks to rely upon Exs.A-1, A-2, A-3, A-5 and A-6. Ex.A-4 is a rough sketch and therefore is not germane, in so far as the question of title is concerned. The other documents Exs.A-1 to A-3, A-5 and A-6 are concerned undisputedly the land in dispute stands registered as

"Hill Poramboke" in all those documents. Although, Exs.A-5 and A-6 merits consideration being the extracts of Survey and Settlement Registers of Vijayawada for the years 1923 and 1965 respectively, even in the remarks column of Exs.A-1 and A-2, it has been clearly stated that the land in question stood registered for a long time in the revenue records as "Hill Poramboke" therefore, the encroachment by the respondents 2 and 3 is objectionable. As against this unequivocal evidence adduced on the side of the applicant, the respondents seek to place reliance mainly on Ex.B-6,

which is a copy of the A.P. Gazette No.26, dated 28-06-1962. The entry therein at serial No.444, according to the petitioners pertains to the property in dispute. The name of the institution mentioned *inter alia* in the said entry is shown as "Mosque's Thakia". The learned Special Court adverting to Ex.B-6 sought to distinguish the same on the premise that "Mosque's Thakia" is not 'Musafir Khana'. The learned Special Court was of the view that Ex.B-6 did not render any help to the case of the respondents. Placing reliance upon the report of the Commissioner, appointed by it, eventually the learned Special Court reached the conclusion that the land in an extent of 357 square yards situate by the side of patta land of the 1st respondent was grabbed.

Learned counsel for the petitioners represents that Musafir Khana was formerly known as "Mosque's Thakia"

and unfortunately the relevant correspondence in this case has not been filed. What it is clearly not borne out of the record, cannot be considered and the eventual finding reached by the learned Special Court cannot be found fault with. At any rate, it cannot be said that there has been an error of jurisdiction committed by the

learned Special Court.

One contention of the learned counsel for the writ petitioners merits consideration at this stage. As can be seen from the counter filed by the writ petitioners there has been a clear plea that they have perfected the title by means of adverse possession, as taken *inter alia* therein. Even R.W.2 has spoken to on oath about prescriptive title but the learned Special Court failed to frame an appropriate issue on the plea of prescriptive title by means of adverse possession. Naturally no finding has been reached in regard thereto as there is no issue. Having regard to the thrust of the contention of the respondents that the foundation stone was laid by the then Municipal Commissioner for the construction of

"Musafir Khana" way back in the year 1927 and that the land in dispute has been in the occupation of the respondents by constructing a building and running charitable institution therein and that it has been subsequently taken over by the Wakf Board. It need be noticed that whether respondents

2 and 3, under those circumstances, can be termed as grabbers of the land and more particularly as to whether they have not perfected title to the disputed land by means of adverse possession. These two crucial aspects have not been adverted to and considered by the learned Special Court, which in our considered view would tantamount to the error of jurisdiction by failing to consider the relevant plea and even the little evidence that has been adduced in support of the said plea. In that view of the matter, the judgment in question is liable to be set aside.

In the result, the Writ Petitions are allowed by setting aside

the impugned judgment and the matter is remitted to the Special Court for fresh consideration after giving an opportunity to both the parties to lead evidence, if any, on the issue of adverse possession and by framing an appropriate issue on that plea giving its finding as discussed hereinabove. Under the situation, the costs shall abide the result of the L.G.C.

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T. CH. SURYA RAO, J

Date: 17-11-2006

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G. CHANDRAIAH, J

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